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Subject: Offer of Settlement; Complaint No. R9-2005-0059 For Administrative Civil Liability Against JRMC Real Estate, Inc., and Complaint No. R9-2005-0097 Against City of Escondido (Consent Calendar Item #9)

The Regional Board review and consideration of the Revised Offer of Settlement against JRMC Real Estate, Inc. and the City of Escondido offered August 15, 2005 is just another example of the continued claim of denial of responsibility in dealing with the business practices that continues with this developer and lack of response and enforcement by the City of Escondido for its residents. The attempt to pass responsibilities of negligence onto other parties has been a continued practice throughout the entire development of this project (ERTC) and the Palomar Energy Project (PEP).

The California Energy Commission (CEC) was successful with this very same tactic when evidence was presented against the PEP site. It took several months after evidence was presented to get the Compliance Manager (Connie Bruins) from the CEC to inspect the site while the excuse for the violation photographs were that even though the PEP site owner was using the property for work and equipment storage that because it was not owned by Sempra Energy that the violations were the fault of the ERTC. Evidence presented by the "Discharger" in Exhibit 2 & 2A by removing properties from the original Notice of Intent (NOI) will attempt to do the same.

The Merkel & Associates assessment (Exhibit 4) is disputed with a written statement submitted to the Water Board on August 1, 2005 and the attached photographs are additional evidence. The photograph **Photo Point 35** in the assessment was taken 16 June 2005 while three months earlier show another story below.



(16 March 2005) upstream of Country Club Road crossing of unnamed tributary

Pledges to bring only portions of the ERTC into substantial conformity with Order No. 99-08-DWQ will only give appearance of conformity while large portions specifically on the residential side of the property still remain without solutions leaving storm water runoff implementation in question. While the Water Control Board can only recommend Best Management Practices (BMPs), the enforcement and implementation of those practices depend on the city and developer addressing those very issues raised and actually acknowledging those failures with some type of response to residents. One major failure demonstrated throughout the project is the concentration of flow onto adjacent property, which is normally prohibited, and city officials and the developer have failed to address. The mass grading and steep banks created by excessive cut and fill to create buildable land parcels have also created larger than average drainage patterns that bypass the current design which still have not been addressed. Normally long or high slope banks should be softened by utilizing such grading techniques as terracing or slopes designed to facilitate surface drainage, limit soil erosion and avoid landslides and soil instability. The natural drainage pattern of the site should also avoid increasing drainage courses, and minimize runoff impacts on adjacent and/or downstream areas. Drainage flow onto Allenwood and even bypassing the Kauana Loa catch basin has been created because of these slopes and implementing a better plan is necessary to avoid the same results year after year. The October 3rd deadline to ensure substantial conformance of all properties within the ERTC as described in the Revised NOI either has failed to address these issues or the developer has no intention of addressing those issues.

Residents on the western border of the project believe that the City's conduct has been reprehensible by allowing the developer do whatever he has wanted and get away with it. The offer to conduct a root cause analysis to identify the City's failure to implement, or require JRMC to implement, BMPs would first of all require communication with residents instead of the pattern of ignoring them which is currently taking place. The issue of discharges is what is currently being investigated but the city has ignored complaints of all types. Instead of taking measures to prevent runoff the developer uses the ERTC site as a Sand & Gravel business while the city allows it to happen.



Slopes and brow ditch channel rains and runoff into neighborhood while on the other side of the hill has thousands of feet of the same dumping into a hidden area below Kona Kai area that eventually bypasses the catch basin on Kauana Loa.



The settlement offer statement "Without admitting any liability, we have discussed various settlement scenarios with the Regional Board staff" is just another example of questionable business practices of the developer and their avoidance of reality. Another technique used to get residents to settle for damages they have had to pursue on their own, but it requires them to sign waivers so the developer can avoid responsibilities in the future. The "Dischargers" Offer of Settlement submitted is extremely low especially considering that the developer continued discharging for months after the initial notice of investigation was sent on January 19, 2005. Once again there was no change in those practices and acceptance of the current offer would be unacceptable. It is also believed the City of Escondido should also be held accountable and be held responsible for their lack of action and should be required to implement provisions for residents along the entire western border which have been ignored in the settlements or BMPs. Parties such as Sempra and SDG&E have already skirted the process with their documented violations and will continue to avoid their obligations with this settlement. There is no other reason why so many people with Sempra email addresses are copied as interested parties.

Since the "Dischargers" intend to exercise their statutory right for a full formal hearing, acceptance of the settlement offer would be unjustified because the "Dischargers" should be held accountable for their activity. Rescinding the CAO and considering all NOV's prior to September 14, 2005 settled and resolved would be rewarding both the City and developer of these unacceptable practices.

/S/

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